



STATE BOARD OF EQUALIZATION

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November 5, 1990

Re: Request for Advisory Opinion

Dear Mr. .

This is in response to your letter of September 4, 1990 to Mr. Richard Ochsner in which you request our opinion whether the proposed real property transfers described in your letter and set forth below will result in a change in ownership and thus require reassessment for property tax purposes.

Current Corporate Structure

The proposed transaction involves a group of corporations the current structure of which is as follows: "A" Corporation owns 100% of the stock of "B" Corporation. "B" Corporation owns 100% of the stock of "C" Corporation, "D" Corporation, "E" Corporation, "F" Corporation and "G" Corporation. The stock of "A" Corporation is owned by six individuals. Four of these individual shareholders each own 7%, one owns 3% and one owns 69% of the stock of "A" Corporation.

Proposed Transaction

The proposed transaction is, in essence, a "contraction" of the 1st and 2nd tier subsidiaries of the group into the parent "A" Corporation. However, the transaction is, as currently planned, expected to occur in two (2) "stages."

The first stage of the transaction would involve the tax-free liquidation of "C", "D", "E", "F" and "G" into "B" under section 332 of the Internal Revenue Code of 1986 as amended (the "Code"). The second stage of the transaction would involve the tax-free liquidation of "B" into the parent corporation, "A", under section 332 of the Code. All transfers of real property between the entities involved are transfers of the entire fee interest in the property.

Ref 13
11/10/90

November 5, 1990

Prior to each transaction, the respective shareholders will, by reason of the stock ownership chain extending down through "A" and "B" Corporations, collectively own one hundred percent (100%) of each first and second tier subsidiary. These same shareholders will own the exact same proportional interest in each subsidiary's assets after the liquidation as they had prior to the liquidation. Only the group's form and the method of holding title will have changed.

Law and Analysis

"Change in ownership" is defined by section 60 of the Revenue and Taxation Code¹ as a

[T]ransfer of a present interest in real property, including the beneficial use thereof, the value of which is substantially equal to the value of the fee interest.

Section 61 provides in relevant part that except as otherwise provided in section 62, "change in ownership" as defined in section 60, includes, but is not limited to: ...

(i) The transfer of any interest in real property between a corporation; partnership, or other legal entity and a shareholder, partner or any other person.

Section 62(a)(2) states that a "change in ownership" does not include:

Any transfer between...legal entities... which results solely in a change in the method of holding title to real property and in which the proportional ownership interests of the transferors and the transferees, whether represented by stock...or otherwise, in each and every piece of real property transferred, remain the same after the transfer. The provisions of this paragraph shall not apply to transfers also excluded from change in ownership under the provisions of subdivision (b) of Section 64.

See also Property Tax Rule 462(j)(2)(B).

Section 64(b) provides:

(b) Any corporate reorganization, where all of the corporations involved are members of an affiliated

¹ All subsequent statutory references are to the Revenue and Taxation Code unless otherwise indicated.

November 5, 1990

group, and which qualifies as a reorganization under Section 368 of the United States Internal Revenue Code and which is accepted as a nontaxable event by similar California statutes, or any transfer of real property among members of an affiliated group, ...shall not be a change in ownership. (Emphasis added.)

Section 64(b) defines the term "affiliated group" as:

[O]ne or more chains of corporations connected through stock ownership with a common parent corporation if:

(1) One hundred percent of the voting stock...of each of the corporations, except the parent corporation, is owned by one or more of the other corporations; and

(2) The common parent owns, directly, one hundred percent of the voting stock...of at least one of the other corporations.

See also Property Tax Rule 462(j)(2)(A).

The transfers in each step of the transaction are between legal entities and are merely a change in the method of holding title. The only difference is that the properties will be held by the parent corporation rather than a first or second tier subsidiary. The proportional ownership interests of the individual shareholders and "A" Corporation in the real property being transferred will be exactly the same after each transfer. We recognize that if the word "transferors" found in section 62(a)(2) is applied literally in this case, section 62(a)(2) would not apply because the "transferor" in each transaction is a subsidiary which, after having been liquidated would not hold the proportional interest it held immediately prior to the transfer. It is our position that the term "transferors" in section 62(a)(2) is not literally applied in such situations. See, e.g. Property Tax Rule 462(j)(2)(B) example (v). Instead, we focus on the individual shareholders, and since the proportional ownership interests of the individual shareholders before and after each transfer remain the same, the transfers would qualify for the exclusion under section 62(a)(2).

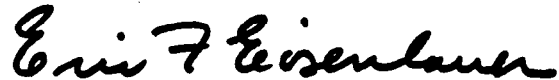
With respect to section 64(b), we have taken the position that transfers between a parent and its wholly owned subsidiary are transfers between affiliated corporations for the purposes of that section. Since there is a one hundred percent chain of ownership from the parent corporation ("A" Corporation) to each of the subsidiaries being liquidated, the transfers of real

November 5, 1990

property from "C", "D", "E", "F" and "G" to "B", and from "B" to "A" would be excluded from change in ownership by section 64(b). Further, since the transfers would be excluded under section 64(b), section 62(a)(2), by its own terms would not apply.

The views expressed in this letter are advisory only and are not binding on the assessor of any county. Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Eric F. Eisenlauer
Tax Counsel

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cc: Mr. John W. Hagerty
Mr. Verne Walton